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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,687	12/11/2001	Anthony Earle	81444F-P	3189

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/014,687

Applicant(s)

EARLE ET AL.

Examiner

Frederick C. Nicolas

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3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 4, 8, 12, 15, 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 9-11, 13, 14, 16, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-18, 20 and 21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter "a processing apparatus" as recited in claim 1, line 2, in claim 10, line 2, and the claimed subject matter in claim 7, lines 1-2, "wherein the container is punctured as it fitted onto the processing apparatus" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2,5-7,9-10,20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Popp et al. 5,443,181.

With respect to claims 10 and 20-21, Popp et al. disclose a delivery unit for supplying low viscosity processing solution to a processing apparatus (col. 3, ll. 65-68 onto col. 4, ll. 1-12), which comprises a foil storage container (4) having a nozzle see Figure 2 for location at one end thereof, and incorporating a piston (5a) therein, and

means for activating the piston (6) such that a variable fixed amount of solution is delivered out of the container via the nozzle each time the piston is activated as seen in Figures 2-4, a seal (2a).

The device of Popp et al. will perform the method recited in claims 1-2,5-7 and 9 during normal operational use of the device.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3,14,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popp et al. 5,443,181 in view of Bristow 4,406,654.

Popp et al. have taught all the features of the claimed invention except that the displacement is caused by movement of a cam. Bristow teaches the use of activating a piston of a cartridge such that a variable fixed amount of solution is delivered out of the cartridge (col. 2, ll. 6-23 and col. 3, ll. 21-65), the activation means comprises a rod (12) for pushing the piston, the rod being in connection with a clutch plate (16) activated by a cam (25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the means for activating the piston of Popp et al. with Bristow's feeding device as shown in Figure 1, in order to provide a dispenser in which

the size of the dosages increases in relation to increases of the dose setting numbers, as taught by Bristow (col. 3, ll. 62-63).

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Popp et al. 5,443,181.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seal of Popp et al. to be plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Popp et al. 5,443,181 in view of Taylor et al. EP0354663.

Popp et al. have taught all the features of the claimed invention except that the front end of the piston is shaped to fit exactly into the nozzle. Taylor et al. disclose a delivery unit for supplying low viscosity processing solution to a processing apparatus as seen in Figure 1, which comprises a polypropylene storage container (1) having a nozzle (5) at one end thereof, and incorporating a piston (4) therein, and means for activating the piston (24 and 25), where the front end of the piston is shaped to fit exactly into the nozzle as seen in Figure 7.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the front end piston of Popp et al. with the front end piston of Taylor et al. as shown in Figures 6-7, in order to allow all the products within to be dispensed.

Response to Arguments

8. Applicant's arguments filed 3/22/2004 have been fully considered but are moot in view of the new ground of rejection. However, with respect to applicants' argument that "the processing apparatus itself is not part of the invention being claimed. Therefore, applicant does not believe that it is necessary for the apparatus to be illustrated". Applicants should note MPEP 608.02(d) states that drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter "a processing apparatus" as recited in claim 1, line 2, in claim 10, line 2, and the claimed subject matter in claim 7, lines 1-2, "wherein the container is punctured as it fitted onto the processing apparatus" must be shown or the feature(s) canceled from the claim(s), as per 37 CFR 1.83(a). Applicants further argue that there is no disclosure nor suggestion in Popp et al. that a variable amount of solution is supplied and that the container forms part of a metering system. Applicants should note that Popp et al. specifically disclose that ***the product within is fed in a metered manner*** see column 4, lines 9-12.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
May 17, 2004

 5/17/04
Frederick C. Nicolas
Patent Examiner
Art Unit 3754